

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY**

MATRIMONIAL CAUSE NO. 3 OF 2005

BETWEEN

JOSE DA SILVA PETITIONER

AND

ANGELA DA SILVA RESPONDENT

CORAM : CHOMBO, J.

: Mwale, Counsel for the Petitioner
: Respondent, unrepresented, absent
: Chulu, Court Interpreter Operator
: Jere, Court Reporter

JUDGMENT

The petitioner, Jose Da Silva, prays for the dissolution of his marriage to the respondent, Angela Da Silva on the grounds of cruelty and desertion. The marriage of the petitioner and respondent was officiated at the District Commissioner's Office in Lilongwe in 1976. Subsequent to the celebration of the said marriage the parties cohabited in Lilongwe. There are two issues of the said marriage, Marcus, Son now aged 29 and Elainer, daughter now aged 27 years respectively. The petitioner and the respondent are both domiciled in Malawi and the Court therefore has jurisdiction to hear the matter.

The petitioner obtained the Registrar's Certificate for the case to be heard undefended. I must therefore warn myself and guard against the dangers of collusion. I have looked at the evidence before me and I am satisfied that there is no evidence of collusion.

According to the petitioner's evidence, some eight years ago he came home on 29 September 1999 to find that the respondent's belongings had been removed from their house and one of their cars was missing from the house. The cook informed him that he had witnessed the petitioner move a number of suitcases from the house into the car and she disappeared. Attempts were made to locate the whereabouts of the respondents but all efforts were in vain. Finally, the petitioner located the car at Capital Hotel but further search revealed that she had not checked into the hotel. Friends of the respondent had not idea about the whereabouts of the respondent. In the evening of that day the petitioner got a phone call from Harare and she informed the petitioner that she had decided to leave the petitioner because she was tired of tidying the house and cooking for the petitioner. No amount of pleading on the part of the petitioner to seek Counsel and reconcile bore any fruits. The respondent refused to reconcile for a period of about four years and now eight years after the respondent decided to separate herself from her lawfully wedded husband he has decided to seek the Court's intervention to have the said marriage dissolved. The respondent is now settled in New Zealand. She refuses to take the petitioner's calls and e-mails have not been attended to.

The petitioner further told the Court that prior to the respondent's desertion the respondent went to the UK for 6 months when their daughter was only 2

years old. The petitioner had to plead with her to come back and take care of the child. At another time, so testified the petitioner, their Son who had attempted suicide in Cape Town decided to come home and she, at that crucial time she decided to leave for Zimbabwe and announced that she was not concerned with her Son's attempts to commit suicide and that that was his problem.

The petitioner also testified that there was not much love lost by the respondent to him and whenever there was intimacy between them she would just open her legs and say to him "if you want it you can have it now". It is on the basis of the desertion and cruelty that the petitioner now seeks dissolution of the said marriage.

If the case was purely based on the evidence on the claim of cruelty, I may have been reluctant to grant the petitioner's prayer as I find the evidence rather scanty. However, the petitioner's evidence on desertion is well grounded and I will proceed on that ground alone.

Before dissolution of marriage based on desertion is granted, it is necessary that four main elements be proved by the petitioner:

1. that there has been separation of the parties for a period not less than three years immediately preceeding the presentation of the petition.
2. there must be an intention, where construed or direct, on the part of the deseting spouse to remain separated permanently

3. the said absence must be without the consent of the complaining spouse.
4. that the said desertion must be without reasonable cause on the part of the deserting spouse.

It is the evidence of the petitioner that the respondent simply walked out on him 8 years ago and she has refused not only to come back home but even give tangible reasons for leaving the matrimonial home. The petitioner has made efforts to communicate with the respondent but she has refused to take the petitioner's calls nor respond to his e-mails. The petitioner did not just wait for the statutory three years but eight years. I find therefore that the respondent has deserted the petitioner and the petition must succeed on that ground. I therefore grant decree nisi of divorce as prayed for.

I order that costs be in the cause.

MADE in Court this 20th day of December, 2007.

E.J. Chombo
J U D G E